

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Earnest Durant, Jr.,)	
)	
Complainant,)	PERB Case Nos. 10-E-01
)	
v.)	Opinion No. 1287
)	
Government of the District of Columbia)	
Department of Corrections,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

On February 16, 2010, Earnest Durant, Jr. ("Complainant") filed a document styled:

Petition for Judicial Enforcement of PERB Case Number 01-U-16,
Slip Opinion Number 698 and Hearing Examiner's "Report and
Recommendation" PERB Case Number 07-U-43.

Request Recommendation for Sanctions to be Imposed including
awarding of Attorney Fees and other sanctions as may be directed.

("Petition for Enforcement and Motion for Sanctions") against the District of Columbia Department of Corrections. On March 10, 2010, Respondent filed an answer with a pleading styled "Response to Petition for Enforcement and Claimant's Request for Sanctions" ("Response").

The Complainant's Petition for Enforcement and Motion for Sanctions and the Respondent's Response are before the Board for disposition.

II. Background

The Complainant is an employee of the District of Columbia Government Department of Corrections, has the job title of Criminal Investigator, and is assigned to the Department of Corrections Warrant Squad. (See Complaint at p. 5).

A. Petition for Enforcement

The Complaint requests that the Board move for enforcement of its decision in PERB Case No.: 01-U-16 (Slip Op. No. 698). In addition, the Complainant requests enforcement of a report and recommendation issued in PERB Case Nos. 07-U-43 and 08-U-57.

B. Motion for Sanctions

The Complainant initially asserts the following in support for his request for sanctions:

Additionally, [the C]omplainant request[s], that since attorney fees cannot be awarded because the Board lack[s] the authority under D.C. Code Section 1-617.13 (2001 ed.). That in filing this "Judicial Petition for Enforcement" to the Superior Court of the District of Columbia for judicial enforcement and sanctions to be imposed, including but not limited to disciplinary procedures under Chapter 16, DPM. That will include complainant be granted all reasonable costs and fees including attorney's fees in PERB Case Number 07-U-43 and other remedies as the Court may allow or direct.

The request for sanctions is repeated at pages 5 and 14 of the Petition without further elaboration or argument concerning the request.

III. Discussion

A. Petition for Enforcement

In Slip Opinion No. 698, PERB Case No. 01-U-16, the Fraternal Order of Police/Department of Corrections Labor Committee filed an unfair labor practice complaint on behalf of, among others, Earnest Durant, alleging that DOC had committed an unfair labor practice, violating D.C. Code § 1-617.04(a)(1)(3) and (4), by: (1) attempting to reduce his outstanding performance ratings in his criminal investigator position to an excellent rating; and (2) removing his fire arm and assigning him to administrative duties. The matter was submitted to a hearing examiner and report and recommendation was issued finding DOC in violation of the CMPA. Exceptions were filed by both parties. The Board adopted the Hearing Examiner's finding that DOC committed a violation of D.C. Code §1-617.04(a)(1) when it removed Mr. Durant's firearm and placed him on administrative duty. The Board ordered DOC: to cease and desist from violating Mr. Durant's employee rights under D.C. Code §1-617.04(a)(1); cease and

desist from interfering with, restraining or coercing Mr. Durant in the exercise of his rights under the CMPA; and make Mr. Durant whole for economic losses, if any, suffered as a result of the Respondent's violations of their rights. (See *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 50 DCR 5059, Slip Op. No. 698, PERB Case No. 01-U-16 (2003).

Although not clearly argued, it appears that the Complainant is contending that the Department has failed to comply with the Board's decision and order in Slip Op. No. 698, by continuing to: (a) violate Mr. Durant's employee rights; and (b) interfere with, restrain or coerce Mr. Durant in the exercise of his rights. In support of this contention, it seems that the Complainant is alleging that actions of Supervisory Criminal Investigator Wanda Patten pertaining to Mr. Durant's involvement in two arrest warrants provide evidence of continuing violations of Mr. Durant's rights.

Pursuant to Board Rule 560.1, "if any party fails to comply with the Board's decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order.¹ The Board finds that Mr. Durant's Petition for Enforcement fails to specifically indicate how the Department has failed to comply with the Board's decision in Slip Opinion No. 698. Instead, Mr. Durant provides examples of Mr. Durant's disagreement with how Supervisory Criminal Investigator Patten wanted certain arrest warrants handled. The Petition does not allege how these actions violated Mr. Durant's rights under the CMPA, or how they were related to Slip Opinion No. 698. As a result, the Board denies the Complainant's Petition for Enforcement concerning Slip Opinion No. 698.

The Complainant also requests enforcement of consolidated PERB Case Nos. 07-U-43 and 08-U-57. This matter was submitted to a hearing examiner. A report and recommendation was issued finding that DOC had violated D.C. Code § 1-617.04(a)(1) and (4) by resigning Officer Ernest Durant to the Community Corrections Office at the Grimke Building to retaliate for his having filed a complaint with the D.C. Public Employees Relations Board alleging that the DOC had engaged in various unfair labor practices. The hearing examiner, however, had rejected a number of other allegations and the Complainant filed exceptions to the report and recommendation. At this time, the matter is still pending before the Board.

¹ See also D.C. § 1-617.13(b), which provides, in pertinent part, that:

The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board.

Whereas no decision and order has been issued in PERB Case Nos. 07-U-43 and 08-U-57, a request for enforcement is premature at best. Therefore, the Board denies the Complainant's Petition for Enforcement as it pertains to PERB Case Nos. 07-U-43 and 08-U-57.

B. Motion for Sanctions

The Complainant's request for sanctions appears to be a request for costs associated with PERB Case Nos. 07-U-43 and 08-U-57. Whereas the Board denies the Complainant's request for enforcement, there is no need to determine whether sanctions are appropriate in this case. Therefore, the Complainant's Motion for Sanctions is denied.

THEREFORE, the Board denies the Complainant's Petition for Enforcement of Slip Opinion No. 698, PERB Case No. 01-U-16, and consolidated PERB Case Nos. 07-U-43 and 08-U-57. In addition, the Complainant's Motion for Sanctions is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant, Earnest Durant's Petition for Enforcement is denied.
2. The Complainant's Motion for Sanctions is denied.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 30, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-E-01, Slip Opinion No. 1287 was transmitted via U.S. Mail and e-mail to the following parties on this the 27th day of June, 2012.

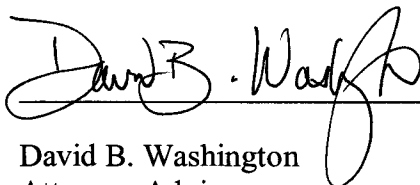
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